IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5390 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEESA MUNICIPALIKA

Versus

KESHUBHAI A PATEL

Appearance:

MR MB GANDHI for Petitioners

MR JD AJMERA for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/01/2000

ORAL JUDGEMENT

#. The petitioners in this petition have challenged the order passed by the Gujarat Secondary Education Tribunal by which the Tribunal has allowed the application filed by the respondent no.1 herein being Application No.248 of

1987. The case of the respondent no.1 before the Tribunal was that initially he was appointed as a Teacher long back in Charls Wanson High School which is under Deesa Municipality. Thereafter in December 1982 he was appointed as Supervisor and his appointment on the said

post was approved by the department and was accordingly drawing necessary allowance attached with the said post. Said post was abolished by the management on 1.6.1987 and as a natural consequences, the additional allowance which was paid to the said Teacher was also stopped. Aforesaid order was challenged by the respondent no.1 herein before the Secondary Education Tribunal, Ahmedabad by raising a dispute under section 38 of the Gujarat Secondary Education Act. The order of stopping supervisor allowance was set aside and a declaration was given to the effect that the applicant teacher continues as as a supervisor and it will be open for the school to follow the procedure under section 36(1) of the Gujarat Secondary Education Act. . The said order is under challenge before this Court in the present petition.

#. Aforesaid petition was admitted by the learned single Judge on 8.10.87. However, no interim relief was granted to the petitioner. With the result that the respondent no.1 continued to serve on the aforesaid post of supervisor and was drawing the aforesaid allowance attached to the said post.

#. Today when the matter was taken up for hearing, it was stated by learned advocate Mr. Ajmera who is appearing for the respondent no.1 that the respondent teacher has already retired on attaining the age of superannuation since long and he is no longer in service. According to him therefore, said matter has become infructuous. However I have gone through the record of the petition. The Tribunal has given detailed reasoning in its judgment while allowing the application of the respondent no.1. The Tribunal has pointed out in its judgment that the impugned order resulted into reduction in rank and therefore, procedure under section 36(1) of the Gujarat Secondary Education Act was required to be followed as the concerned teacher was getting additional allowance because he was holding the said post and the respondent no.1 was denied the aforesaid amount and therefore, it resulted into monetary loss also.

#. The Tribunal has also pointed out in its order that

the DEO has filed his remarks in which he has stated that the post of supervisor is continued. He has stated that in the opponent school the classes continues to be more than 10 and therefore the post of supervisor is continued in the said school. Considering the said remarks the Tribunal also came to the conclusion that the respondent no.1 was demoted from the post of supervisor to the post of Assistant Teacher without following the procedure under section 36(1) of the Gujarat Secondary Education Act and therefore, the department had also not approved the decision of the school. In view of the aforesaid facts and circumstances, it cannot be said that the reasoning of the Tribunal is in any way contrary to law or without any basis. As stated earlier the concerned teacher has already retired on reaching his age of superannuation. On the aforesaid ground I do not find any justification in entertaining this petition. Respondent no.1 was serving on the said post of supervisor till he attained the age of superannuation as there was no interim relief. In the circumstances, there is no substance in the petition and the same is required to be dismissed and the same is accordingly dismissed. Rule is discharge with no order as to costs.

govindan.